IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3984 of 2016 (O&M)
Date of Decision: 05.12.2018.

New India Assurance Company Ltd.

...Appellant

Versus

Rachna and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. R.C. Kapoor, Advocate for the appellant.

None for the respondents.

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B.S.WALIA, J (Oral).

1. Despite service none has put in appearance on behalf of respondent Nos.1 to 4. Accordingly, they are proceeded ex parte.

2. With the assistance of learned counsel for the appellant, I have gone over the award as well as the record.

3. The Motor Accidents Claims Tribunals, Kurukshetra (hereinafter referred to as 'the Tribunal') by taking into account age of the deceased as plus 26 years, occupation as unskilled labourer assessed his income at ₹10,200/- per month as per rates fixed by the Deputy Commissioner, Kurukshetra. Thereafter by taking 50% of his income towards future prospects, applying multiplier of '17', and making deduction of 1/3rd of the income of the deceased towards his personal expenses and further by awarding ₹1 Lakh on account of loss of consortium, ₹25,000/- on account of funeral expenses, ₹1,00,000/- on account of loss of love and affection to minor child/respondent No.2

herein, awarded total compensation of ₹23,05,800/- along with interest @ 9% per annum from the date of filing of the claim petition till the date of realization.

4. Learned counsel for the appellant contended that notification dated 20.02.2015, issued by the Deputy Commissioner, Kurukshetra, fixing the average income of an unskilled daily wager w.e.f. 01.03.2015 to 29.02.2016 at ₹10,200/- was not applicable to the facts of the case since the same was in respect of persons engaged on contingency basis by the government and not in the case of unskilled labourer employed otherwise than in non-governmental organizations and for whom the minimum wages had been notified by the Government of Haryana at ₹7600/- per month. Notification issued by the Government of Haryana for the relevant period specifying wages at ₹7600/- per month and notification dated 20.02.2015 issued by Deputy Commissioner, Kurukshetra, have been produced by learned counsel for the appellant, which is taken on record as Mark-A and B. Learned counsel contends that since in the instant case, the deceased was not working in government department/organization and was treated as an unskilled labourer in the open market, therefore, his income is to be assessed at ₹7600/- per month and not at ₹10,200/-. I find merit in the submission of ld. counsel for appellant as the perusal of the notification dated 20.02.2015 issued by the Deputy Commissioner, Kurukshetra reveals that the same is applicable only for the persons working in government department or organization on contingency basis. Therefore, the income of deceased is assessed as per the notification of Haryana Govt. declaring minimum wages of an unskilled labourer for the relevant period as ₹7600/-

per month. Secondly, learned counsel contends that as per paragraph No.61(iv) of the decision in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, where the deceased was self employed and below the age of 40 years as on the date of accident, 40% of the established income of the deceased less tax component is to be added on account of future prospects while computing compensation.

5. Since in the instant case the deceased was less than 40 years of age, self employed, therefore, the addition of 40% of the established income of the deceased minus the tax component on account of future prospects is to be made while computing compensation.

6. Further, as per paragraph 61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), ₹15,000/- is payable on account of funeral expenses, ₹15,000/- on account of loss of estate besides ₹40,000/- on account of loss of consortium to the wife of the deceased. However, Hon'ble the Supreme Court in Magma General Insurance Co. Ltd. vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, has held that children of the deceased are entitled to award of compensation on account of loss of parental consortium.

7. Accordingly, respondent Nos.1 to 4/claimants are held entitled to award of ₹15,000/- on account of loss of estate as also ₹15,000/- on account of funeral expenses. As regards loss of consortium, respondent No.1-wife and respondent No.2/minor daughter are held entitled to ₹40,000/- each on account of loss of spousal/parental consortium. As regards, award of compensation of ₹1 Lakh on account of love and

affection, the same is not admissible in view of decision in Pranay Sethi's case (supra).

8. In the circumstances, respondents No.1 to 4/claimants are held entitled to the following compensation:-

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Income	₹10,200/-	₹7600/-
2	Future Prospects	50%	(40% of ₹7600)= ₹3040/-
3.	Total Income	₹15,300/-	₹10,640/-
4.	Multiplier applied	17	17
5.	Deduction	1/3rd of ₹15300/- = ₹5100	1/3rd of ₹10640- = ₹3546
6.	Dependency	₹10,200x12x17=₹20,80,800/-	₹7094x12x17=₹14,47,176/-
7.	Love and affection	₹1,00,000/-	Nil
8.	Conventional heads	₹1,00,000/- loss of consortium to (respondent No.1-wife) ₹25,000/- (funeral expenses/last rites)	₹15,000/- (funeral expenses) ₹15,000/- (loss of estate) ₹40,000/- (loss of spousal consortium to appellant No.1-Wife) ₹40,000/- (loss of parental consortium to appellant No.2-minor daughter)
	Total	₹23,05,800/-	₹15,57,176/-

9. Accordingly, as against the compensation of ₹23,05,800/- awarded by the Tribunal, respondent Nos.1 to 4/claimants are held entitled to award of compensation of ₹15,57,176/- along with interest @ 9% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

10. Needless to mention, respondent Nos.1 to 4/claimants would be entitled to award of compensation in proportion to their shares determined by the Tribunal after first making payment of ₹40,000/- each

towards loss of spousal/parental consortium to wife and minor daughter of the deceased i.e. respondent Nos.1 and 2 herein. The Insurance Company shall make the payment to the respondents after making deduction of the tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

11. Accordingly, appeal is allowed and award dated 16.05.2016 passed by the learned Tribunal is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

05.12.2018.
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No